IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10095 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KEDAR RAMCHANDRA SHAHU

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 10095 of 2001

MR NM KAPADIA for Petitioner No. 1

MR SS PATEL, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/01/2002

ORAL JUDGEMENT

1. The petitioner came to be detained by virtue of an order passed by Commissioner of Police, Surat City, Surat, on the 6th July, 2001 in exercise of powers under Section 3 of the Gujarat Prevention Anti-Social

Activities Act, 1985 ("PASA Act" for short).

2. The grounds of detention indicate that the detenu has been branded as a bootlegger. The detaining authority has taken into consideration one offence registered against the detenu under the Bombay Prohibition Act and statement of anonymous witnesses and has come to the conclusion that the activities of the detenu are detrimental to public health and public order. The authority observed that the detenu is required to be immediately prevented from pursuing his activities. It is recorded in the grounds of detention that resorting to less drastic remedy is not possible as it may not be effective in immediately preventing the petitioner from pursuing his activities. The authority observing that detention under PASA is the only effective remedy passed the order in question.

3. The petitioner assails the order on various grounds stated in the petition. However, learned advocate Mr. Kapadia appearing for the petitioner has restricted the argument to the fact that the detenu has not been supplied with the translated version of the documents relied upon by the detaining authority in the language understood by the detenu. Mr. Kapadia submitted that the detenu belongs to Orissa. He only knows Oriya and English. Because of his long stay in Gujarat, he understands Gujarati language, but does not know. the detenu by his representation dated August 14, 2001 addressed to the Secretary, Home Department (Special), has demanded translated version of the communications either in English or Oriya. The detenu has been supplied with Hindi version of the documents duly translated on 10.8.2001. Translated version of the documents pursuant to the representation dated August 14, 2001 has not been supplied. Mr. Kapadia, therefore, urged that non-supply of documents in language understood by the detenu would result into denial of right of making an effective representation. This would infringe the right under Article 22(5) of the Constitution and, therefore, the continued detention of the detenu would be vitiated. He urged that the petition may be allowed.

4. The petition is opposed to by learned Assistant Government Pleader Mr. Patel.

5. Mr. Patel concedes to the situation that Hindi version has been supplied to the detenu by a communication dated August 10, 2001. The representation made on August 14, 2001 specifically demanding translated version either in English or in Oriya language has

remained unattended and documents in either of the two languages have not been supplied to the detenu. This being the situation, the petition deserves to be allowed only on this ground of denial of right of making an effective representation by non-supply of documents in language known and understood by the detenu. In Ibrahim Ahmad Bhatt v. State of Gujarat, AIR 1982 SC 1500, the Apex Court observed that all documents, statements and other material incorporated in the grounds by reference and which have influenced the mind of the detaining authority in arriving at the requisite subjective satisfaction must be furnished to the detenu along with the grounds or in any event not later than five days ordinarily and in exceptional circumstances, for the reasons to be recorded in writing, not later than 15 days from the date of his detention and, secondly, all such material must be furnished to him in a script or language which he understands and failure to do either of the two things would amount to breach of the two duties cast on the detaining authority under Article 22(5) of the Constitution. The Apex Court observed that, if there is failure, the continued detention of the detenu is to be held to be illegal.

6. In view of the above settled position of law and undisputed facts, the petition deserves to be allowed and the same is allowed. The impugned order of detention dated July 6, 2001, passed against the detenu is hereby quashed and set aside. The detenu-Kedar Ramchandra Shahu is ordered to be set at liberty, if not required in any other case. Rule is made absolute.

[A.L. DAVE, J.]

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